MOTION FILED
MAY 29 1992

(9)

No. 91-1420

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JOAN GROWE, SECRETARY OF THE STATE OF MINNESOTA, *et al.*,
Appellants,

v.

JAMES EMISON, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Minnesota

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE ON BEHALF OF CONGRESSMAN MARTIN FROST (TX), CONGRESSMAN JERRY HUCKABY (LA), JAMES H. EVANS, ATTORNEY GENERAL, STATE OF ALABAMA, BRENDA K. MITCHELL, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, STATE SENATE MINORITY LEADER MANFRED OHRENSTEIN (NY), STATE ASSY. SPEAKER SAUL WEPRIN (NY), STATE SENATE PRESIDENT PHILIP J. ROCK (IL), STATE REPRESENTATIVE PETER R. WALLACE (FL), CHAIRMAN, HOUSE REAPPORTIONMENT COMMITTEE, STATE SENATE PRESIDENT GWEN MARGOLIS (FL), IN SUPPORT OF APPELLANTS

[Counsel Listed on Inside Cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

ROBERT B. WALLACE
Counsel of Record
STEVEN M. LEVINE
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER
1341 G Street, N.W.
Washington, D.C. 20005
(202) 626-7660

WAYNE R. ARDEN
499 South Capitol Street, S.W.
Suite 400
Washington, D.C. 20003
(202) 479-5161

JEFFREY M. WICE
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 861-9197
(Counsel for Speaker Weprin)

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Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, Congressman Martin Frost (TX), Congressman Jerry Huckaby (LA), James H. Evans, Attorney General, State of Alabama, Brenda K. Mitchell, Secretary of the Commonwealth of Pennsylvania, State Senate Minority Leader Manfred Ohrenstein (NY), State Assy. Speaker Saul Weprin (NY), State Senate President Philip J. Rock (IL), State Senate President Gwen Margolis (FL) and State Representative Peter R. Wallace (FL), Chairman, House Reapportionment Committtee, respectfully move this Court for leave to file the attached brief *amici curiae* in support of the appellants. The appellants have sought the written consent of all parties for the filing of this brief. Appellants have consented but the appellees have not.

The *amici* consist of Members of Congress, state legislators and other state officials. All the *amici* have an interest in the redistricting process and in protecting the role of state instituions in the process. The power to redraw state legislative and congressional districts, as this Court has repeatedly held, is a power reserved to the states. States and their elected officials who draft, defend and execute redistricting statutes have an important interest in redistricting, as do state legislators and Members of Congress, who are directly affected by redistricting plans.

The brief that *amici* seek to file supplements but does not duplicate the appellants' brief. The attached brief will bring to the attention of the Court relevant matters that are not presently before the Court and are not expected to be presented by the appellants or the appellees. The *amici* brief focuses solely on the issues raised by the federal court's interference in the state court proceeding and does not address the merits of the federal court's decision.

First, the *amici* represent to the Court the long history of state court involvement in the redistricting process. Since *Baker v. Carr*, 369 U.S. 186 (1962), state courts have been actively engaged in the redistricting process. In fact, as discussed in the attached brief, 21 states have constitutional or statutory provisions either requiring or providing for state court review prior to the implementation of legislative redistricting plans. The action of the United States District Court for the District of Minnesota risks rendering these state provisions meaningless. Unless the district court's decision is reversed, litigants and federal courts will be able to simply ignore any redistricting decision made by state courts. Minnesota is not one of the 21 states with such a provision and the appellants have, subsequently, not addressed the effect of the federal court's decision on these states.

Second, the interest of other states experiencing similar jurisdictional disputes is not expected to be represented to the Court. No fewer than 8 states, in addition to Minnesota, have experienced duplicative redistricting litigation in state and federal courts. This has resulted in excessive financial expenditures, conflicting judgments and serious harm to our federal system of justice. All the *amici* have an interest, in this time of tight budgetary constraints, in minimizing the cost of redistricting litigation.

Third, the *amici* bring to this Court's attention the fact that the federal court's decision conflicts with developments in other states. In other states experiencing similar jurisdictional disputes, federal courts generally have deferred to the ongoing state proceeding. The federal courts become involved, if at all, only after the state courts have rendered a decision.

Fourth, the *amici* bring to the Court's attention a recent federal court decision, in a nearly identical case, directly in conflict with the Minnesota federal court's decision. In *Members of the California Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992), a three-judge federal court concluded that the doctrine enunciated by this Court in *Younger*

v. Harris, 401 U.S. 37 (1970), required abstention once the California Supreme Court exercised jurisdiction over congressional and legislative redistricting. The appellants are not expected to pursue the *Younger* abstention doctrine in their brief or oral argument to the Court.

For the reasons set forth above, *amici* respectfully request that the Court grant their motion to file a brief as *amici curiae* in support of the appellants.

Respectfully submitted,

ROBERT B. WALLACE
Counsel of Record
STEVEN M. LEVINE
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER
1341 G Street, N.W.
Washington, D.C. 20005
(202) 626-7660

WAYNE R. ARDEN
499 South Capitol Street, S.W.
Suite 400
Washington, D.C. 20003
(202) 479-5161

JEFFREY M. WICE
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 861-9197
(Counsel for Speaker Weprin)

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INTERESTS OF AMICI CURIAE

The *amici* consist of Members of Congress, state legislators, and other state officials.

All the *amici* have an interest in the redistricting process and in protecting the role of state courts in that process. Few issues are as fundamental to states as state legislative and congressional redistricting. The power to redraw state legislative and congressional districts, as

this Court has repeatedly held, is a power reserved to the states. States and their elected officials who draft, defend and execute redistricting statutes have an important interest in redistricting, as do state legislators and Members of Congress, who are directly affected by redistricting plans. States also have an interest in preserving the jurisdiction and powers of their courts. Governors (as the officials charged with executing the laws of their states) and the State Attorneys General (as the chief legal officers of these States) have a similar interest in protecting the province of state courts.

Moreover, state courts have a vital role to play in the redistricting process. No fewer than 21 states have constitutional or statutory provisions either requiring or providing for state court review prior to the implementation of legislative redistricting plans.[1] The action of the

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[1] ALASKA CONST. art. VI, § 11 (original jurisdiction vested in the superior court to ensure that a valid plan is adopted); ARK. CONST. art. VIII, § 5 (original jurisdiction in state supreme court to compel Apportionment Board to perform its duties and to revise arbitrary action of the Board); COLO. CONST. art. V, § 48 (1)(e) (state supreme court required to review and approve plan); CONN. CONST. art. III, § 6 (d) (original jurisdiction vested in state supreme court to ensure that a valid plan is adopted); FLA. CONST. art. III, § 16 (b) (state supreme court required to determine validity of apportionment plan); HAW. CONST. art. IV, § 10 (original jurisdiction vested in state supreme court to ensure that a valid plan is adopted); ILL. CONST. art. IV, § 3 (b) (state supreme court selects individuals to be commission redistricting tie-breakers and has original jurisdiction to review plan); IOWA CONST. art. III, § 36 (supreme court has original jurisdiction to review apportionment plan); KAN. CONST. art. X, § 1 (c) (automatic review by state supreme court); LA. CONST. art. III, § 6 (b) (if legislature fails to reapportion, responsibility rests with state supreme court); ME. CONST. art. XXI, § 1571- A(3) (state supreme court vested with original jurisdiction to hear any challenge to apportionment plan and make an apportionment if the legislature fails to act); MD. CONST. art. III, § 5 (the court of appeals shall have original jurisdiction to review redistricting plan and grant appropriate relief); MASS. CONST. art. CI, § 3 (original jurisdiction vested in the supreme judicial court); MICH. CONST. art. I, § 2 (state supreme court has original jurisdiction); MO. CONST. art. III, § 2 (upon failure of commission to adopt redistricting plan, state supreme court appoints appellate judges to draw a plan); N.J. CONST. art. 4, § 3 (state supreme court appoints eleventh member of redistricting commission if commission fails to agree on a eleventh member); N.Y. CONST. art. III, § 5 (redistricting subject to review by state supreme court by petition of any citizen); PA. CONST. art. II, § 17 (state supreme court selects fifth commission member if other members unable to agree; Court is also vested with original jurisdiction to review plan); S.D. CONST. art. III, § 5 (if legislature fails to redistrict, responsibility rests with the state supreme court); VT. STAT. ANN. tit. 17 § 1909 (1982) (state supreme court provided with original jurisdiction over redistricting matters); WASH. CONST. art. II, § 43 (6) (state supreme court required to redistrict upon the failure of the redistricting commission to so do).

United States District Court for the District of Minnesota risks rendering these state constitutional provisions meaningless and casts doubt on the powers of state courts in all 50 states to adjudicate redistricting cases. Unless the district court's decision is reversed, litigants and federal courts will be able to simply ignore any redistricting decision made by state courts. This result would foster duplicative litigation and burden states with exorbitant financial expenditures.

The risk to the authority of state courts posed by the district court's decision in this case is great. In the most recent round of redistricting, following the 1990 census, there have been numerous instances in which federal and state courts have been asked to judge the validity of the same redistricting plan. In addition to Minnesota, disputes regarding concurrent jurisdiction have arisen in Alabama, *Wesch v. Hunt*, No. 91-0787 (S.D. Ala. March 9, 1992), *Hunt v. Morris*, 591 So. 2d 83 (Ala. 1992); California, *Members of the California Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992) and *Wilson v. Eu*, 1 Cal.4th 707, 823 P.2d 545 (1992); Florida, *DeGrandy v. Wetherell*, No. 92-40015 (N.D. Fla. filed March 9, 1992), *In Re: Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*,

No. 79,674 (Fla. May 13, 1992); Illinois, *Legislative Redistricting Commission v. LaPaille*, No. 91-C-6318, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992) and *Burris v. Ryan*, 147 Ill. 2d 270, 588 N.E.2d 1033 (1992); New York, *Wolpoff v. Cuomo*, No. 14757-1992 (N.Y. Sup. Ct., Bronx County, filed May 8, 1992), *Scaringe v. Marino*, No. 92-593 (N.D.N.Y. filed May 7, 1992), *Reid v. Marino*, No. 9567-1992 (N.Y. Sup. Ct., Kings County, filed March 26, 1992) *Puerto Rican Legal Defense and Education Fund v. Gantt*, No. 92-1521 (E.D.N.Y. filed March 31, 1992); Ohio, *Voinovich v. Ferguson*, No. 91-1882 (Ohio, Feb. 14, 1992); Pennsylvania, *Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 Pa. March 26, 1992)), *Nerch v. Mitchell*, No. 92-0095 (M.D.Pa. filed March 20, 1992), *Harrison v. Pennsylvania Legislative Reapportionment Commission*, No. 92-0603, 1992 WL 95909 (E.D.Pa. April 21, 1992), and *In Re 1991 Pennsylvania Legislative Reapportionment Commission*, 1992 WL 89158 (Pa. May 5, 1992) and; Texas, *Terrazas v. Slagle*, No. 91-425, 91-426, 91-428, 1991 WL 328626 (W.D. Tex. Dec. 24, 1991), *appealed sub nom. Richards v. Terrazas*, No. 91-1270 (docketed Feb. 5, 1992) and *Slagle v. Terrazas*, No. 91-1546 (docketed March 23, 1992), *Mena v. Richards*, No. C-454-91-F (332nd Jud. Dist. Hidalgo Co., Tex. Nov. 27, 1991).

All the *amici* urge this Court to reverse the district court and reaffirm the preeminent role of a state's judiciary in the redistricting process. This brief focuses solely on the issues raised by the district court's interference with the state court proceedings and does not address the merits of the district court's decision.

Pursuant to Rule 37 of the Supreme Court of the United States, written consent of all the parties was requested. Appellants have consented but the appellees have not. Motion of *amici* for leave to file this brief has been submitted to this Court.

STATEMENT OF THE CASE

In the interests of brevity, the *amici curiae* adopt the statement of the case set forth in the brief of the Minnesota appellants.

SUMMARY OF ARGUMENT

1. The United States District Court for the District of Minnesota violated the principles articulated in *Scott v. Germano*, 381 U.S. 407 (1965) (per curiam) by failing to defer to the parallel state court redistricting proceeding. When a state court assumes jurisdiction over the legislative and congressional redistricting process, due to legislative impasse or the inability of the state to adopt a constitutional redistricting plan, a federal court is required to defer to the ongoing state proceedings. The district court's failure to defer to the state proceedings intrudes on the strong interest of states to ensure the integrity of elections held within their borders and the integrity of their judiciary.

2. The district court exceeded its authority when it adopted a legislative redistricting plan after the state court had entered judgment adopting its own legislative redistricting plan. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the district court was required to respect the state court judgment and to dismiss all claims relating to legislative redistricting. A district court cannot completely ignore a state court judgment and issue a competing legislative plan. Such an action would render meaningless numerous state constitutional provisions vesting state courts with jurisdiction over legislative redistricting.

ARGUMENT

THE FEDERAL COURT'S LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS SHOULD BE VACATED

I. THE FEDERAL COURT WAS REQUIRED BY THE PRINCIPLES ARTICULATED IN *SCOTT v. GERMANO* TO DEFER TO THE ONGOING STATE COURT PROCEEDINGS

As this Court knows, following its seminal decision in *Baker v. Carr*, 369 U.S. 186 (1962), holding malapportionment claims justiciable, courts were deluged with suits brought by litigants contending that districting plans in their states violated the Constitution. Over the years, state courts have adjudicated many of these suits. State courts, as courts of general jurisdiction, have the authority to hear federal constitutional claims, subject of course to review by this Court pursuant to 28 U.S.C. 1257.

In 1965, in *Scott v. Germano*, 381 U.S. 407 (1965), this Court explicitly approved the involvement of state courts in the redistricting process. In *Scott* this Court held, on facts similar to those of the present case, that a federal court hearing a redistricting case should stay its hand pending the completion of related state proceedings. In that case, the Illinois Supreme Court had ruled that the districting plan for the Illinois State Senate was unconstitutional and directed the legislature to develop a new districting plan that satisfied all applicable legal requirements. One of the parties to the state court action asked a federal district court, which was already hearing a related matter, to stay its action pending resolution of the state court proceedings. The district court, however, refused to do so. The Supreme Court reversed stating that:

> We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.

Id. 381 U.S. at 409.

Following *Scott*, state courts have continued to hear and decide redistricting cases. *See, e.g., Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992); *Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983); *Assembly v. Deukmajian*, 180 Cal. Rptr. 297, 30 Cal. 3d 638, 639 P.2d 939 (1982); *Legislature v. Reinecke*, 6 Cal. 3d 595, 99 Cal. Rptr. 481, 492 P.2d 385 (1972); *Silver v. Brown*, 63 Cal. 2d 2870, 46 Cal. Rptr. 308, 405 P.2d 132 (1965); *Harris v. Anderson*, 194 Kan. 302, 400 P.2d 25 (1965), *cert. denied*, 382 U.S. 894 (1965); *Hughes v. Maryland Committee for Fair Representation*, 241 Md. 471, 217 A.2d 273 (1966), *cert. denied*, 384 U.S. 950 (1966); *Jackman v. Bodine*, 43 N.J. 453, 205 A.2d 713 (1964).

Federal courts have routinely abstained from assuming jurisdiction over redistricting litigation when state courts have previously assumed jurisdiction.[2] This has continued

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[2] *See, e.g., Bianchi v. Griffing*, 393 F.2d 457, 461 (2d Cir. 1968) (first-filed federal action stayed in favor of later-filed state action to invalidate apportionment of county board of supervisors); *Badham v. Eu*, 568 F. Supp. 156, 158 (N.D. Cal.) (federal court abstained in deference to congressional redistricting by state court, noting that "[r]eapportionment, which is carried out by the states, is an area in which state courts are encouraged to require and formulate valid plans"), *aff'd sub nom. Badham v. United States District Court*, 721 F.2d 1170 (9th Cir. 1983); *Avens v. Wright*, 320 F. Supp. 677, 686 (W.D. Va. 1970); *Mahoney v. Burkhardt*, 299 F. Supp. 787, 789 (D.N.J. 1969) (U.S. District Court, on its own motion, abstained from acting in legislative apportionment case where the state supreme court was in the process of resolving the matter); *Ince v. Rockefeller*, 290 F.Supp. 878 (S.D.N.Y. 1968) (in suit challenging legislative districts under Fourteenth and Fifteenth Amendments, federal court abstained in favor of first-filed state action).

to be a common occurrence during the present round of redistricting.[3]

This Court's decision in *Scott v. Germano* establishes that it is state agencies, including state courts, that have initial responsibility in fashioning redistricting plans. When the state legislature or other state entity fails to carry out its reapportionment responsibility, intrusion by the judiciary into this intensely political and divisive function is better left to the state court. This principle, recognized in *Scott*, is consistent with the Court's decision in *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny establishing the primacy of state legislatures in developing redistricting plans and remedying any defects. This Court's prior decisions recognize that redistricting is essentially a state concern, involving state officials, state interests, state election processes and representatives of the state.

The federal courts should, accordingly, grant great deference to state agencies or state entities, including state courts, in an area of such fundamental state importance as redistricting. State courts—with judges who swear allegiance to the same Constitution as federal judges—are fully competent to adjudicate issues of federal constitutional law that redistricting controveries occasion. State courts are likewise competent to decide issues arising under the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.*, except for those issues as to which the Act vests exclusive jurisdiction in the United States District Court for the District of Columbia. *See Hathorn v. Lovorn*, 457

[3] *See Members of the Cal. Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992); *Nerch v. Mitchell*, No. 92-0095 (M.D. Pa. filed March 20, 1992) (federal court stayed proceedings pending Pennsylvania Supreme Court decision adopting new congressional districts in *Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992)); *Legislative Redistricting Commission v. LaPaille*, No. 91-C-6318, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992).

U.S. 255, 269 (1982). Allowing federal district courts to interfere with the exercise of jurisdiction by state courts over redistricting matters violates well-established principles of federalism.[4] As Professor Tribe has explained:

> Federal injunctions which disrupt state judicial proceedings are doubly offensive: they not only hinder state efforts to maintain a smoothly running law enforcement system, but also deny the principle of comity, the fundamental premise of judicial federalism which holds that, since both federal and state courts have a duty to enforce the Constitution, there is no constitutional basis, in the absence of some infirmity in the state judicial process itself, for preferring federal courts to state courts as adjudicators of federal constitutional claims.

L. Tribe, *American Constitutional Law* at 147-148 (1978) (note omitted).

Consistent with *Scott*, this Court's subsequent decisions recognize that federal courts play only a limited role in developing redistricting plans. In *Chapman v. Meier*, 420 U.S. 1 (1975), the Court noted "(w)e say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court." *Id.* at 27. The federal courts are required to give legislatures and state courts an opportunity to remedy constitutionally infirm redistricting schemes. *See Reynolds v. Sims*, 377 U.S. 533, 586 (1964); *Wise v. Lipscomb*, 437 U.S. 535 (1978); *McDaniel v. Sanchez*, 452 U.S. 130, 150 n. 30 (1981). It is only when the state, through its own institutions, is unable to adopt a constitutional redistricting plan that a federal court, as a last resort, may step

[4] *See generally, Younger v. Harris*, 401 U.S. 37, 44 (1970) (The concept of "Our Federalism" means, *inter alia* that "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States").

in to order that a particular plan be implemented. This is true even in cases where the federal court has already acted: "The Court has repeatedly encouraged the state court to fashion appropriate relief in reapportionment cases, even after a federal court has itself entered an order." *Travia v. Lomenzo*, 86 S. Ct. 7, 9 (1965) (In Chambers Opinion).

The district court's decision in this case ignores the principles set forth in *Scott*. Although couched in terms of an injunction against Minnesota's Secretary of State, the district court's order has the same effect as its previously-vacated injunction against the Minnesota state court. Under the district court's order, as under its previous injunction, the state court is effectively prohibited from implementing its redistricting plan.

As demonstrated above, when redistricting actions are commenced in state and federal courts, the federal court is required to defer to the state proceeding. Such a course of action is consistent with our system of federalism and the prior teachings of this Court. The states must be provided the opportunity to enable their own institutions to address one of the most fundamental and important state issues—legislative and congressional redistricting.

In short, for three decades, state courts have played an important part in the adjudication of redistricting matters. In the latest round of redistricting litigation, following the 1990 census, however, state courts have found themselves increasingly under attack by litigants seeking to avoid state court jurisdiction. Indeed, in the instant case, the litigants sought to have a federal court adopt a redistricting plan after the state court had previously adopted a valid plan. This Court should reaffirm the long standing principle that states have a preeminent interest in ensuring that state institutions, including state courts, can continue to resolve redistricting disputes. Reversing the district court's decision will vindicate this interest and

prevent the wasteful, needless and duplicative litigation damaging to our system of federalism.

II. THE FEDERAL COURT ERRED IN DECLINING TO ABSTAIN FROM INTERFERING WITH PENDING STATE JUDICIAL PROCEEDINGS UNDER THE DOCTRINE ESTABLISHED IN *YOUNGER v. HARRIS*

Under the principles established by this Court in *Younger v. Harris*, 401 U.S. 37 (1971), the federal court was required to abstain from interfering with the pending state judicial proceedings. The *Younger* abstention doctrine has its roots in the principles of federalism and in the recognition of the "legitimate interests of both State and National Governments," which may occasionally conflict. *Id.* 401 U.S. at 44. The *Younger* Court was concerned that permitting duplicative litigation and the attendant risk of conflicting judgments would cause great harm to relations between the federal government and the states:

> Th(e) underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of "comity," that is a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their functions in their separate ways.

Id.

Younger requires federal courts to defer to ongoing state judicial proceedings where the state proceedings implicate important state interests and afford federal plaintiffs an adequate opportunity to raise their constitutional challenges, "unless state law clearly bars the interposition of the constitutional claims." *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423,

431 (1982). Although once thought to be applicable only to criminal proceedings, it is now well established that the *Younger* doctrine of abstention is fully applicable to state civil proceedings. *Id.*, 457 U.S. at 432; *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987) (*Younger* abstention applies "not only when the pending state proceedings are criminal but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.").

The Minnesota federal court was required to abstain under *Younger*. Redistricting clearly implicates important state interests that state courts are fully competent to resolve. The federal court's disregard of the state proceeding and intrusion into the state redistricting process is exactly the type of dispute this Court sought to avoid in *Younger* and its progeny. The preservation of "Our Federalism" requires federal courts to abstain when confronted with a redistricting dispute being addressed by the state courts.

Recently, in a nearly identical case, a three-judge federal court in California concluded that the *Younger* doctrine required abstention once the California Supreme Court exercised jurisdiction over congressional and legislative redistricting. *Members of the California Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992). The court noted that redistricting implicated important state interests and that the state courts have concurrent jurisdiction over claims under the United States Constitution and under the Voting Rights Act. "Absent the conferring of exclusive jurisdiction on the federal courts, and absent allegations that the state court's proceedings were in bad faith or unconstitutional, we must abstain and presume that the state courts will safeguard federal constitutional and voting rights." *Id.* slip op. at 20.

III. THE FEDERAL COURT WAS REQUIRED TO RESPECT THE STATE COURT JUDGMENT AND DISMISS ALL CLAIMS RELATING TO LEGISLATIVE DISTRICTING

When the Minnesota state court issued its final order establishing new legislative districts, the federal court was required to dismiss all claims relating to legislative districting. The case became moot since there was presently a state legislative districting plan adopted by the state. The federal court was not free to ignore the state court plan and proceed as if the state had not acted.

A. The Federal Court's Order Violates the Full Faith and Credit Act, 28 U.S.C. § 1738

The *amici* adopt the argument set forth in the Minnesota appellant's brief on the violation of the Full Faith and Credit Act.

B. The Federal Court's Decision Renders Meaningless Constitutional and Statutory Provisions in 21 States

The United States Constitution is silent on how a state is to redistrict. States have chosen a variety of methods to redraw legislative and congressional districts, including citizen commissions, bipartisan commissions, apportionment boards and legislative bill enactment. However, regardless of the redistricting mechanism, many states provide state courts with the responsibility to ensure that valid plans are adopted by state institutions.[5]

These provisions allow for an organized and speedy review of plans and ensure that any redistricting plan complies with applicable legal requirements. Under our system of federalism, state courts have the authority to render decisions on the legality of redistricting plans. The federal courts decision in Minnesota would do severe damage to our Nation's concept of federalism. State

[5] *See* note 1, *supra*.

courts would have little incentive to carry out their state constitutionally-mandated role to review or adopt legislative redistricting plans.[6]

If a federal district court at any time can adopt its own redistricting plan regardless of a parallel state court proceeding or decision, there is no reason for the state court ever to become involved in redistricting cases. The rule adopted by the Minnesota district court would invite continued litigation of redistricting issues that have already been decided in the state courts and would remove from state court consideration the vital issues of state policy raised in redistricting cases. This has already resulted in duplicative litigation in state and federal courts, excessive financial expenditures, conflicting judgments and serious harm to our federal system of justice. Concepts of federalism are rendered meaningless if a federal court can simply ignore state court redistricting efforts and assume the task itself.

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[6] Even where state constitutions do not expressly provide state courts with jurisdiction over congressional redistricting, the same principles of federalism and judicial economy weigh in favor of state courts adopting congressional plans when the state is unable to adopt a valid plan. Congressional redistricting plans have recently been adopted by the Pennsylvania and California Supreme Courts. *See Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992); *Wilson v. Eu*, 1 Cal. 4th 707, 823 P.2d 545 (1992).

CONCLUSION

This case presents the Court with an opportunity to reaffirm the important role of state courts in our system of government. State courts should have the right to exercise jurisdiction over such a fundamentally important state interest as congressional and legislative redistricting. The federal court in Minnesota disregarded well established principles of federalism and this Courts prior precedent on abstention. Affirmation of the lower courts ruling would severely infringe on the ability of the state judiciary to carry out its constitutional and statutory duties. State court decisions would become meaningless if a federal court could simply ignore them. The expense placed on states as a result of duplicative litigation would be exorbitant and, additionally, would place an extreme burden on the limited resources of the judiciary.

This Court should vacate the legislative and congressional redistricting plans adopted by the district court and reverse the lower courts February 19, 1992 decision.

Respectfully submitted,

ROBERT B. WALLACE
Counsel of Record
STEVEN M. LEVINE
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER
1341 G Street, N.W.
Washington, D.C. 20005
(202) 626-7660

WAYNE R. ARDEN
499 South Capitol Street, S.W.
Suite 400
Washington, D.C. 20003
(202) 479-5161

JEFFREY M. WICE
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 861-9197
(Counsel for Speaker Weprin)